

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

KEVIN RAY FOWLER, JR.,

Plaintiff,

v.

CIVIL ACTION NO. 2:05-cv-00434

JERRY DETRICK,
STEVE CANTERBURY,
and any and all John Does to be named at a later date,

Defendants.

MEMORANDUM OPINION AND ORDER


Pending before the court is the plaintiff's Complaint, which challenges the conditions of his current confinement under 42 U.S.C. § 1983, and an application to proceed in forma pauperis. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended: 1) that the court dismiss the plaintiff's Complaint because it fails to state a claim upon which relief can be granted and 2) deny the application to proceed in forma pauperis. Neither party has filed objections to the Magistrate Judge's findings and recommendations.

The failure to object to a magistrate's findings and recommendations may be deemed a waiver on appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206

(9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendations of the Magistrate Judge and orders judgment consistent with the findings and recommendations. The court **ORDERS** that the plaintiff's Complaint be **DISMISSED** and that his application to proceed in forma pauperis be **DENIED**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: December 13, 2005



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE